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January 10, 2005

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Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY
Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re:

Reply To Counterproposal
MB Docket No. 04-411, RM-11096
South Central Communications Corporation - FRN: 0007-0736-87

Dear Ms. Dortch:

Transmitted herewith is an original and four copies of the Reply To Counterproposal, filed on behalf of South Central Communications Corporation in connection with the above-referenced proceeding.

Should there be any questions regarding this matter, please contact undersigned counsel.

Sincerely,
Edward S. O'Neill
Lee G. Petro

Counsel for South Central
Communications Corporation

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JAN 10 2005

Federal Communications Commission
Office of Secretary

In re: _____ }
_____ }
Amendment of Section 73.202(b), _____ }
Table of Allotments, _____ }
FM Broadcast Stations _____ }
(Georgetown, Mason, Oxford and West _____ }
Union, Ohio, and Salt Lick, Kentucky) _____ }

MB Docket No. 04-411
RM-11096

TO: Office of the Secretary
Chief, Allocations Branch
Media Bureau

REPLY TO COUNTERPROPOSAL

South Central Communications Corporation ("South Central"), the licensee of Station WJXB-FM, Knoxville, Tennessee, by and through its attorneys, and pursuant to Section 1.415 and 1.419 of the Commission's rules, hereby submits the following Reply Comments in response to the Notice of Proposed Rulemaking, released on November 5, 2004, in the above-referenced proceeding.¹ The NPRM established January 11, 2005, as the deadline for submitting reply comments in this proceeding, and therefore, these Reply Comments are timely filed.

South Central's limited purpose in filing these Reply Comments relates to a counterproposal that was filed by Gateway Radio Works, Inc. ("Gateway"), on December 27, 2004, in the instant proceeding (the "Counterproposal"). The Counterproposal proposes, *inter alia*, the downgrade of Station WJXB-FM, Knoxville, Tennessee, to a Class C0 facility. However, the Commission's policies specifically prohibit the filing of a counterproposal filed in an FM allotment proceeding to propose the reclassification of a Class C facility.²

¹ *Georgetown, Mason, Oxford, Ohio et. al*, Notice of Proposed Rulemaking, 19 FCC Rcd 22,016 (2004).

² *1998 Biennial Regulatory Review-Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 21,649, 21,664 (2000) ("1998 Biennial Review").

In the *1998 Biennial Review*, the Commission adopted rules to permit parties to propose the reclassification of a Class C facility to Class C0 status if it operates with a height above average terrain ("HAAT") of 450 meters or less. The Commission, though, was concerned about the impact of such proposals on rulemaking proceedings, and decided to restrict the submission of reclassification proposals to the initial petition for rulemaking stage, and prohibited such proposals by means of subsequent submissions.³ This requirement is necessary, the Commission reasoned, since a Notice of Proposed Rulemaking will be released only after the Commission issues an order to show cause to the targeted station, and the licensee of the station either indicates its intention to not file an application to increase the station's HAAT above 450 meters, or fails to construct a facility authorized to increase the station's HAAT to meet the minimum Class C HAAT requirement.⁴

Therefore, the Commission stated that "reclassification may be initiated only through an original petition for rule making to amend the FM Table of Allotments, and not through comments or counterproposals." *Id.* This dictate was recently cited by the Media Bureau in dismissing a counterproposal filed in similar circumstances to those presented in the instant matter.⁵ There, the Media Bureau specifically rejected a counterproposal that included a reclassification request, stating that "the reclassification procedure is not available to the party filing the counterproposal" and that the counterproposal would be "subject to dismissal."⁶

³ *Id.* at 21,664 ("The reclassification procedure also may be initiated through the filing of an original rule making petition to amend the FM Table of Allotments.")(emphasis added).

⁴ *Id.* at 21,664 ("where a triggering petition proposes an amendment or amendments to the FM Table of Allotments in addition to the proposed reclassification, such as a channel substitution, the staff will issue an order to show cause as described *supra*, and a notice of proposed rule making will be issued only after the reclassification issue is resolved.")

⁵ *Fort Collins, Creede, Westcliffe and Wheat Ridge, Colorado*, 19 FCC Rcd 15,317 (2004).

⁶ *Id.* at ¶ 5.

An integral part of the Counterproposal is the reclassification of Station WJXB-FM as a Class C0 facility, which could be accomplished, if at all, only after the Commission were to issue an Order to Show Cause to South Central, or if South Central voluntarily agreed to the reclassification. As shown in the attached Declaration of the Chief Executive Officer of South Central, Gateway has not contacted South Central to seek its consent to the reclassification, and, in any event, South Central would not grant such consent if it was requested.

Thus, in light of the Commission's clear holdings precluding the reclassification procedure sought to be invoked here by a Counterproposal, and South Central's unwillingness to voluntarily accept Class C0 status for Station WJXB-FM, it is clear that the untimely and defective Counterproposal filed by Gateway must be summarily dismissed.

Respectfully submitted,

South Central Communications Corporation

By: _____

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January 10, 2005

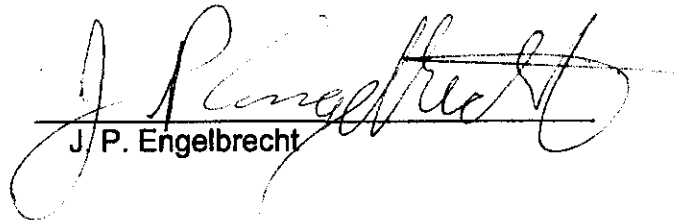
DECLARATION

John P. Engelbrecht hereby declares as follows:

I am the Chief Operating Officer of South Central Communications Corporation ("SCCC"), the licensee of Station WJXB-FM, Knoxville, TN. In that capacity I have read the "Counterproposal" filed by Gateway Radio Works, Inc. ("Gateway") in the FCC rulemaking proceeding identified as MB Docket No. 04-411, RM-11096, whereby Gateway proposes the downgrading of Station WJXB-FM from Class C to Class C0 status.

I hereby declare that neither Gateway nor any other party has requested the consent of SCCC to such a downgrade and that, further, such consent would be denied should it be requested by any party.

1/4/05
Date


J. P. Engelbrecht

Certificate of Service

I, Michelle Brown Johnson, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of this Reply was sent this 10th day of January, 2005, via United States First Class Mail, postage prepaid, to the following:

John F. Garziglia, Esquire
Michael H. Shacter, Esquire
Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, Seventh Floor
Washington, DC 20005
Counsel to Gateway Radio Works, Inc.


Michelle Brown Johnson